

(b) Participate in any prehearing conference held by the presiding officer.

(c) Agree to stipulations as to facts which will be made a part of the record.

(d) Make opening statements at the hearing.

(e) Present relevant evidence on the issues at the hearing.

(f) Present witnesses who then must be available for cross-examination by all other parties.

(g) Present oral arguments at the hearing.

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 430.86 Discovery.

CMS and any party named in the notice issued under § 430.70 has the right to conduct discovery (including depositions) against opposing parties. Rules 26–37 of the Federal Rules of Civil Procedure apply to such proceedings; there will be no fixed rule on priority of discovery. Upon written motion, the presiding officer promptly rules upon any objection to discovery action initiated under this section. The presiding officer also has the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

§ 430.88 Evidence.

(a) *Evidentiary purpose.* The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues involved in the proceeding. Argument is not received in evidence. It must be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, concerning the party's position and what he or she intends to prove, may be made at hearings.

(b) *Testimony.* Testimony is given orally under oath or affirmation by witnesses at the hearing. Witnesses are

available at the hearing for cross-examination by all parties.

(c) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Those stipulations, and any exhibit proposed by any party, are exchanged before the hearing if the presiding officer so requires.

(d) *Rules of evidence.* (1) Technical rules of evidence do not apply to hearings conducted under this subpart. However, rules or principles designed to ensure production of the most credible evidence available and to subject testimony to test by cross-examination are applied by the presiding officer when reasonably necessary.

(2) A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his or her direct examination.

(3) The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence.

(4) All documents and other evidence offered or taken for the record are open to examination by the parties and an opportunity is given to refute facts and arguments advanced on either side of the issues.

§ 430.90 Exclusion from hearing for misconduct.

The presiding officer may immediately exclude from the hearing any person who—

(a) Uses disrespectful, disorderly, or contumacious language or engages in contemptuous behavior;

(b) Refuses to comply with directions; or

(c) Uses dilatory tactics.

§ 430.92 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing are placed in the correspondence section of the docket of the proceeding. These data are not considered part of the evidence or record in the hearing.

§ 430.94 Official transcript.

(a) *Filing.* The official transcripts of testimony, together with any stipulations, briefs, or memoranda of law, are filed with CMS.